

21. A method of playing a three segment wagering game comprising the steps of:
- A player placing three wagers to participate in three sequentially played game segments;
 - A dealer dealing a first card to each player and to the dealer and paying the player when a rank of the player's card exceeds a rank of the dealer card;
 - A dealer dealing at least one additional card to each player and the dealer, and paying the player when a combined point total of his hand comprising the first card and the at least one additional card exceeds a point total of the dealer's hand without exceeding 21;
 - A dealer dealing additional cards, if necessary, only to each player to provide at least an amount of cards needed to form a poker-type hand, and wherein the player's hand ranking is compared to a predetermined hierarchy of winning poker-type hands and a payout awarded when the player achieves one of the predetermined winning hands.

REMARKS CONCERNING THE AMENDMENTS

No Amendments have been made to the claims beyond those presented in the Amendment mailed 26 June 2002.

SUMMARY OF THE REJECTIONS

Claims 1-11 and 21-27 have been rejected under 35 USC 103(a) as unpatentable over Awada '643 in view of Awada '550

It is asserted that Awada

“clearly shows the claimed invention except for the resolution of the final game, the poker hand. In '643 both the dealer's hand and the player's hand are completed and compared to resolve it. '550 teaches in a “three segments game play” (pg. 5, line 13 or remarks) to compare the player's cards to a final pay table. This method eliminates the involvement of dealing cards to the dealer (versus games where players cards are

compared to the dealers to resolve the wager), hence, speeding up the game. It is known to be desirable to speed the play of a game (i.e. more hands per given time) in order to increase profitability to the house (see Cabot, col. 1, lns. 38-50 for example). To have used the '550 method of resolving the final wager in '643 would have been obvious in order to speed up the play of the game."

RESPONSE TO THE REJECTION

The single ground of rejection in this Application, the rejection of claims 1-11 and 21-27 under 35 USC 103(a) essentially asserts that the only difference between Awada '643 and the claimed invention is that in the resolution of the final poker hand. Awada pays according to winning against the dealer and the claimed method pays according to a pay table, without competition against the dealer in that particular game element play. The underlying basis of the rejection is that both game resolution by 1) comparing player and dealer hands and 2) comparing player hands and a pay table are known in the art as evidenced by Awada '550. As they are essentially equivalent game resolution methods, it would be obvious for one of ordinary skill in the art to substitute the pay table of Awada '550 for the player versus dealer resolution of Awada.

The value of the Awada '550 reference in this rejection has been misplaced for a number of reasons. The critical difference in the present game is not merely the fact that a pay table is used in a casino table card game, but rather that play of a casino table card game switches from a player-versus-dealer game to a player-versus-paytable game at a critical junction in the play of a sequenced game. Awada '550, in spite of the fact that it is offered in the rejection as:

".... '550 teaches in a "three segments game play" (pg. 5, line 13 or remarks) to compare the player's cards to a final pay table..."

the game played by Awada '550 is three consecutive games played against a paytable. There is never a dealer's hand, there is never a shift in play from a player-versus-dealer game to a player-versus-paytable game at any time, or visa-versa. Awada '550 therefore teaches little more than

what Applicant admitted to be old (that casino table card games with a payable existed) and may add that consecutive games with paytables are known. The critical step of switching from a player-versus-dealer game to a player-versus-paytable game was not known in the art. That is a crucial element of the present invention and allows a greater variety of games with greater player interest to be played. This can be seen by an analysis of the games, hold and payouts in the Awada '550 game, which is limited by its requirement of only payable pay.

The first game that must be played by Awada '550 in a one-card payable game is a one-to-one bet that the player's card will equal or exceed a value of 9. This provides a one-to-one wager with odds of 7:6 against the player (seven cards are less than 9 and six cards [9, 10, J, Q, K and Ace], which means that the house will always win 1/13 hands or 7.69%. That is a very bad wager for a player, yet the game cannot be varied without shifting the same odds to the house (e.g., a value of 8 would win for a player). The game is extremely limited in the play of the first game and all subsequent games because of the use of only player cards. This is less than the potential play for a player where the play may approach 50:50 where a tie in values between the player and the dealer is a push. This provides a very good and even start in the play of the sequence game of the claims.

Additionally, the nature of the play of the games are limited by Awada '550 to parallel games, where a weak hand in the first two games tends to carry through to a weak hand in the final game. A two card hand with no pairs is less likely to improve to a bonus hand in a five-card hand. The play in '550 is less able to overcome this hurdle because the games remain as high poker game values against a payable. This is in contrast with play in the recited game of Applicant where the second game may be blackjack or baccarat, where a quality poker hand may be insignificant to the value of the second game play or even adverse to play of the second game. For example, a 4 and 5 would be valueless in poker but a quality hand in baccarat. A 3 and 8 would be valueless in poker but would be an excellent double-down hand in blackjack. The very ability to shift between a player-versus-dealer game to a player-versus-paytable game offers significant benefits, options and marketability to the sequenced game recited in the present claims.

It must be first recollected that all of the claims are directed towards a three segment game play with the first two games being played against a dealer and the third game played against a payable. Each of the steps and difference in steps must be considered within the context of the three game progression with a transition in the mode of win evaluation. Given this background, it should be noted that structural differences between player versus dealer resolution and pay table resolution include at least:

- a) Eliminating the step of counting dealer cards and adding additional cards, as necessary, to make a six card final poker hand for the dealer, speeding up the game;
- b) pay table awards to players that are potentially significantly higher than awards based on dealer versus player wins, adding more excitement to the game; and
- c) faster resolution of poker payouts because all comparisons are standard in the confines of poker hierarchy, as opposed to having to compare individual hands to dealer hands that change with each game played.

These are substantive differences, and these differences are not taught by the cited art as beneficial, but have been assumed to be evident in the analysis in the rejection. However, these differences are neither obviously implemented, nor are the benefits of those changes apparent from the teachings of the references, nor are the effects of those benefits on the acceptability of the games obvious from the teachings of the references.

To begin with, **no art cited in this rejection shows the cessation of dealing to the dealer after competition in at least two games between the player and dealer, and then continued dealing to the players to complete hands in a non-competitive casino table card game.** That in itself is a variation in the manner of play that is not obvious from the teachings of the references. Awada '643 teaches only player-versus-dealer play and Awada '550 teaches only player-versus-paytable play. There is no suggestion in either reference or any reference cited in

the rejection that a blend of the two distinct systems could be played or that there would be a benefit of such play.

When more than one player is present, the play of Awada '643 requires that the various player and dealer hands be distally and conceptually combined (it would a breach of security to physically combine cards of the dealer and player, then separate the dealer and player cards so that dealer cards could be combined with the cards of another player). The play in Awada '550 limits play of the games to poker variations and prevents player active involvement which is available in baccarat or blackjack.

It is also to be noted that claims 1-11 require the dealing of specifically 6 cards to all players in the play of a five-card poker hand. This feature has not been shown by either Awada Patent or other art cited in the rejection. Although claims 21-27 recite an open-ended number of cards in the third poker-type game played against a payable, all other issues raised in favor of patentability are still material and establish novelty and unobviousness. No art of record in the rejection shows the transition from a player-versus-dealer game to a player-versus-paytable game, nor specifically teaches the benefits of that change.

Claims 1 and 21 have been amended previously to show that only players receive cards in the play of the third segment, if necessary, to form a five-card or six-card poker hand after playing player-versus-dealer games. That claim limitation, in the context of a continuing series of games, is therefore absent from the teaching of both references and cannot be obvious from the combination of those two references.

In addition to the fact that these structural differences in the play of the game are not obvious from the teaching of the two references used in the rejection, the overall impact of those changes is beneficial beyond any expectation from the teachings in those references.

The Office Action has attempted to diminish the value of the Snow Declaration. That declaration was submitted to support the evidence of the impact of the changes on the value and quality of play of the game represented by the claims in comparison to the game described by Awada. The Declaration of Roger M. Snow under 37 C.F.R. 1.132 accompanies the previous Amendment and Response. That Declaration does in fact provide evidence of the effect of the

specific structural changes described above on the impact of the game with players and casinos with regard to acceptability and play efficiency and house retention on the play of the game, and indicates that the relative commercial success was due at least in part to the difference in play that represents the difference in the games claimed in this Application and taught in Awada '643.

Because of the cessation of dealing to the dealer while continuing dealing to the player (not suggested in the prior art in the rejection) and the use of pay tables versus dealer versus player resolution, there was about a 40% increase in rate of play in the game. This is a significant benefit to both the player and the house. With greater play frequency, the house has more games per hour and has the ability to retain more money/time. Because the house has the ability to retain more money/time, it is able to have more flexibility in defining the payout tables, so that higher bonuses can be paid to players while still maintain desired levels of return on the tables to the house (casino). These benefits are not shown or even suggested in the art, and the benefits from the alteration in play from the game illustrated by the Awada Patent and the presently claimed invention were not obvious from the teachings of the references.

In direct comparison between the game designed and marketed by Awada (and represented by the claims of Awada '643) and the game represented by claims 1-11 and 21-27, the Declaration of Roger M. Snow states that because of the change in play from player versus dealer resolution to game table resolution of players' hands, casinos preferred the game of the present application and requested replacement of the Awada-type games with the games of the present invention. This requested exchange was based upon casino manager perceptions of the quality of the games and not according to any marketing efforts according to the Declaration of Roger M. Snow (e.g., see paragraph 14).

It is clear from the differences in the claims of the present invention and the evidence of record that the effects of the structural change in play between the game of Awada and the game recited in claims 1-11 and 21-27 are not obvious, and even if there is a perception that *prima facie* obviousness had been established, the Declaration of Roger M. Snow rebuts that finding, establishing unexpected results over the game of Awada.

Amendment

Serial No. 09/740,216

METHOD OF PLAYING A THREE PART WAGERING GAME

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The rejection is in error and should be withdrawn. All claims 1-11 and 21-27 should be allowed.

A fee calculation sheet is enclosed. Please charge any deficiency, or credit any overpayment to deposit account 50-1391.

Respectfully submitted,

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